Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1974.

No. 74-27.

THE LONG ISLAND RAIL ROAD COMPANY,
Petitioner,

v.

INTERSTATE COMMERCE COMMISSION, et al.,
Respondents.

BRIEF IN OPPOSITION TO THE GRANTING OF A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

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I. STATEMENT.

The District Court dismissed the case below. The Long Island Rail Road, Petitioner, appealed from that order on the ground that the District Court erroneously held (1) that the Long Island had failed to take proper steps to opt out of a tariff of proposed increased rates and (2) that Long Island had not been denied the right to make an independent determination of its rates, which is required by Section 5a of the Interstate Commerce Act, 49 U.S.C. § 5a. The United States, a party to the case, supported the Long Island in that appeal.

The Court of Appeals decided the tariff and Section 5a questions in favor of Long Island. Nothing remains of those issues. As to damages, the Court of Appeals has three times reviewed that matter and each time has concluded that the damages to which Long Island is entitled is not the windfall it seeks but rather is "any net revenue reduction caused by the increased joint rates to which it objected" (30a).

There is no public interest or important question in this narrow measure of damages issue and no conflict with other decisions. There is nothing in this case which indicates the presence of a substantial question requiring the attention of this Court.

The controversy arises from the fact that the Long Island has been dissatisfied with the basis of divisions to which it agreed and which has been applied in allocating revenues among the railroads which are parties to the joint through rates applicable between Long Island Rail Road points and other points throughout the United States, Canada, and Mexico. In discussing the Long Island's stated reason for not concurring in the rate increase in controversy, the Interstate Commerce Commission found that it could not accept as valid the "transparent postulation" of Long Island Rail Road that the rate increases would be self-defeating. Its motivation, in not concurring in the increase, the Commission found, was clearly to put pressure on the connecting carriers to renegotiate their divisions agreement. (Petitions for Declaratory Order—Rule 52 of Tariff Circular No. 20, 337 I.C.C., 274, 286).

The tariff publishing agent testified that he had conflicting instructions in this matter, an instruction from the Long Island not to increase the joint rates between Long Island points and points on other railroads and an instruction from all the other railroads of the country to increase those rates in common with all other rates between all

points. He testified further that in view of the conflict he followed the instructions of the majority (429a-430a).* The tariff which he filed and written statements by the Long Island and by the other lines were received by the Commission before the tariff became effective and thereafter and the increased rates were examined by the Commission at length and under all provisions of the Interstate Commerce Act and were found by the Commission not to be unreasonable.

The Long Island argues that, under a provision of the Commission's tariff publishing rules it is entitled to receive, as its share of the joint rates, its local rates between interchange points with respondents and origins and destinations of the traffic on the Long Island because the increases in rates to and from all Long Island points were made without proper authority from that railroad. The Court of Appeals sustained the Long Island's contention that the increase in joint rates was made without proper authority from the Long Island and that, in the circumstances, it was deprived of its right of independent action. That Court denied the Long Island the windfall which it would reap if that position with respect to damages should be upheld, and it spelled out the proper measure of damages. Had the Long Island's position been upheld, the result would have been that its divisions would have been trebled and its connecting carriers (most of which are in bankruptcy) would have been required to haul the traffic, or much of it, without receiving anything for the transportation performed by them (439a).*

Long Island argues, however, that the aforesaid tariff rule of the Commission requires that it take its local rate as its divisional share of the joint rates. That no such arbitrary result is required is shown by the fact that Long

* The above references and that on page 4 are to the record in the Court of Appeals.

Island concurrently urges the contrary position, i.e., that the taking of its local rates as divisions is required or permitted by the tariff-circular rule upon which it relies (92a).

Moreover, the Long Island has been free at any time to restrict the concurrences which it has on file with the Interstate Commerce Commission, thus mitigating its damages. But it never sought to mitigate.

CONCLUSION.

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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